

Appeal from a decision of the Platte River Resource Area Manager, Bureau of Land Management, Casper, Wyoming, rejecting right-of-way application W-90076.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way -- Oil and Gas Leases: Extensions -- Oil and Gas
Leases: Suspensions -- Rights-of-Way: Applications

Rejection of an application for a right-of-way for road access across Federal lands not under lease to a drill site on a Federal oil and gas lease may be reasonable where it is filed too close to the expiration date of the lease (after which the right-of-way would be meaningless) to allow processing consistent with the Department's statutory obligations under the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976. However, where an application for suspension of operations is filed prior to lease expiration to obtain time for approval of the right-of-way, rejection of the right-of-way application will be set aside as premature in the absence of an adjudication of the request for suspension.

2. Oil and Gas Leases: Extensions -- Oil and Gas Leases:
Suspensions

The Secretary of the Interior is authorized to suspend oil and gas leases in the interest of conservation where action cannot be taken on an application because of the time needed to comply with requirements of the National Environmental Policy Act of 1969. Where the lessee's inability to commence drilling prior to lease expiration cannot be attributed to any order, delay, or inaction by any Federal agency, the Secretary is not obligated to grant a suspension but has the discretion to do so in the exercise of his informed discretion upon a finding that it is in the interest of conservation.

APPEARANCES: John March, pro se; Marla Mansfield, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

John March has appealed from a May 30, 1985, decision of the Platte River Resource Area Manager, Bureau of Land Management (BLM), Casper, Wyoming, rejecting appellant's right-of-way application W-90076. Appellant had filed the right-of-way application for access over public lands to a well site on Federal oil and gas lease W-50435, located in section 32, T. 38 N., R. 83 W., Natrona County, Wyoming.

Oil and gas lease W-50435 was issued to appellant on June 1, 1975, with a primary term of 10 years. 1/ In 1980, appellant drilled one well on the lease, which failed to produce oil or gas and was subsequently plugged and abandoned. On April 15, 1985, appellant filed with BLM an application for permit to drill (APD) on the lease. It was appellant's intention to reopen and drill deeper the dry well drilled in 1980. On review of the APD, BLM found it to be deficient and appellant was instructed to submit further information, including a surface-use plan and a map of access routes to the drilling site. On May 14, 1985, a field inspection was conducted on the lease by BLM with a representative of appellant present. The APD was subsequently approved on May 30, 1985.

During the field inspection, it was determined that a right-of-way would be required across Federal lands outside the lease area to gain access to the drill site. Appellant filed a right-of-way application on May 21, 1985, 10 days before the lease was scheduled to expire. In rejecting this application as untimely filed, the Area Manager stated:

[T]he right-of-way application was filed on May 21, 1985, thus allowing the Bureau of Land Management (BLM) only eight (8) working days (9 days less Memorial Day Holiday) in which to process the application. Eight days is not sufficient time in which to comply with the requirements of the Federal Land Policy and Management Act of 1976 2/ or with the National Environmental Policy Act of 1970, 3/ the two primary statutes governing the assessment and approval of rights-of-way.

1/ Although leases ordinarily expire at the end of their primary term in the absence of a well capable of production of oil or gas in paying quantities, they are subject to a two-year extension by drilling over the expiration date. Any lease on which "actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities." 30 U.S.C. § 226(e) (1982); see 43 CFR 3107.1.

2/ Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (1982).

3/ National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4347 (1982).

Current BLM policy is to process rights-of-way within 30 days of receipt of a complete application (BLM Manual 2802.4182). The regulations in 43 CFR 3162.3-1(d) require that a complete Application for Permit to Drill (APD) be initiated 30 days prior to commencement of operations, failing in which processing of the APD may not be completed by the desired date. Neither a complete APD [n]or a right-of-way application was filed 30 days prior to the anticipated commencement date.

Appellant argues two grounds for error on appeal. First, appellant claims the "delay by the BLM in informing me of the right-of-way requirements (if any) has prohibited me from obtaining access to the re-entry location [on the lease]." More significantly, appellant states that on both May 13, and May 23, 1985, he requested a suspension of operations and production in order to obtain time for approval of the necessary right-of-way and this request was not properly processed in accordance with the regulations.

In response to appellant's statement of reasons, counsel for BLM argues the request for suspension of operations is not properly before the Board "absent an appeal of the decision on the suspension of operations." Counsel argues a right-of-way was properly required for access to the drill site across public lands off the leasehold. BLM asserts it was proper to reject the right-of-way application where it was filed only eight working days before lease expiration, after which time a right-of-way would be meaningless.

We note, as a preliminary matter, a right-of-way is required for an access road across public lands not under lease to reach a drill site on a Federal oil and gas lease. Solicitor's Opinion, 87 I.D. 291, 302 (1980); see Gas Company of New Mexico, 88 IBLA 240 (1985). An oil and gas lessee obtains no rights pursuant to the lease to use public lands outside the leasehold. Frances R. Reay, 60 I.D. 366, 368 (1949). To build an access road across such public lands, the lessee must comply with the requirements for obtaining a right-of-way as outlined in Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1982), and the implementing regulations, 43 CFR Part 2800. Ignorance of this requirement will not avail appellant as all persons dealing with the Government are presumed to have knowledge of statutes and regulations duly promulgated thereunder. 44 U.S.C. §§ 1507, 1510 (1982); Jones-O'Brien, Inc., 85 I.D. 89, 96 (1978).

[1] As an abstract concept, the refusal of BLM to undertake processing of a right-of-way application is reasonable where it is clear from the circumstances that it was filed so late that it could not be reviewed and acted upon in a manner consistent with the Department's statutory obligations under the National Environmental Policy Act and the Federal Land Policy and Management Act prior to the deadline after which the right-of-way would become useless to the applicant. To hold otherwise would require an exercise in futility. However, in this case the propriety of the BLM decision refusing to process appellant's right-of-way application is inextricably tied to consideration of the request for suspension of operations filed by appellant.

We note the presence in the record of a letter from appellant to BLM dated May 23, 1985. In the letter, appellant requested a suspension of

operations "because of the need to obtain approval of right of way which has been delayed in the BLM Resource area and which right of way is necessary to gain access to the * * * well and re-entry site." On appellant's letter is a note, dated May 28, 1985, apparently written by a BLM employee, which states: "I thought we told March that the [suspension of operations] could not be granted for the reason he requests it." The file contains a copy of a memorandum from the Area Manager to the District Manager transmitting the request for suspension with a recommendation that it be denied. The memorandum was dated June 3, 1985, after issuance of the decision under appeal rejecting appellant's right-of-way application. There is nothing in the record disclosing an adjudication of the request for suspension.

Applicable regulations state that a suspension of operations can be granted by the authorized BLM officer when it is "in the interest of conservation." 43 CFR 3103.4-2; see also 43 CFR 3165.1. 43 CFR 3103.4-2(a) outlines the procedures for making such an application:

Applications for relief from production requirements or from operating requirements shall be filed in triplicate in the proper BLM office. No suspension of operations and production shall be granted except where the authorized officer directs or consents to a suspension in the interest of conservation. Complete information shall be furnished showing the necessity of such relief. 4/

In Fuel Resources Development Co., 69 IBLA 39 (1982), the Board discussed the effect of filing an application for a suspension of operations prior to the expiration date of an oil and gas lease:

It is well settled that in the absence of a written application for suspension properly filed prior to the expiration date of the lease, the lease terminates. Teton Energy Co., 61 IBLA 47 (1981); Coseka Resources (U.S.A.) Ltd., 56 IBLA 19 (1981); Coronado Oil Co., 52 IBLA 308 (1981). However, an oil and gas lease may be retroactively suspended where the expiration date has passed if a suspension application is properly filed before the lease terminates. Jones-O'Brien, Inc., supra. The distinction has been explained as

4/ The regulation governing suspension applications, 43 CFR 3103.4-2, does not require the use of a specified, preprinted form when requesting a suspension. It does require that the application provide complete information showing the necessity of a suspension and further requires that the application "be filed in triplicate in the proper BLM office." 43 CFR 3000.0-5(f) defines "proper BLM office" to be the BLM office "having jurisdiction over the lands subject to the regulations in which the term is used in [43 CFR] Group 3000 and 3100 * * *." Because appellant's request was addressed to the BLM Platte River Resource Area office, the office with apparent jurisdiction over the lands in appellant's lease, we cannot find appellant has violated this requirement although it appears from the transmittal memorandum that the area office does not have authority to adjudicate suspension applications.

follows: "An application filed before the lease expires, can be viewed as preserving the right of the Department to act on the application. If a suspension application is not filed prior to the lease expiration, the lease ends totally and there is nothing in existence for the Department to suspend." Jones-O'Brien, Inc., supra at 94-95 (citation omitted).

69 IBLA at 41.

[2] The Mineral Leasing Act of 1920 authorizes the Secretary of the Interior to suspend oil and gas leases in the interest of conservation of natural resources. 30 U.S.C. § 209 (1982). It has been recognized that the Department may suspend a lease in the interest of conservation where action cannot be taken on an application because of the time needed to comply with the requirements of the National Environmental Policy Act. Jones-O'Brien, Inc., 85 I.D. 89, 91 (1978); see Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 600 (D.C. Cir. 1981); Union Oil Co. v. Morton, 512 F.2d 743, 749 (9th Cir. 1975). Where, as in this case, the lessee's inability to commence drilling prior to lease expiration cannot be attributed to any order, delay, or inaction by any Federal agency, the Secretary of the Interior is under no obligation to grant a suspension, but has the authority to do so in the exercise of his informed discretion after making the necessary finding that suspension is in the interest of conservation. See Sierra Club (On Judicial Remand), 80 IBLA 251, 264 (1984); Jones-O'Brien, Inc., 85 I.D. at 91.

From the notation written on the copy of the request for suspension appearing in the file as well as the recommendation in the transmittal memorandum, it appears BLM officials in the Platte River Resource Area Office were disinclined to support the request for suspension. However, there is nothing in the record before the Board to indicate this application was adjudicated. In the absence of a decision exercising the discretionary authority to grant or deny the request for suspension, rejection of the right-of-way application for lack of sufficient time to process the application is premature. 5/

Accordingly, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

5/ It may be that an adjudication of appellant's request for suspension of operations has issued subsequent to transmittal of the appeal record to this office, especially since it appears such applications, unlike right-of-way applications, are adjudicated in the district office rather than the area office. If the suspension application has been finally adjudicated adversely to appellant (i.e., a decision has been served on appellant and no appeal was filed) then the right-of-way request would thereby be rendered moot. However, we cannot sustain a decision which would purport to indirectly adjudicate the application for suspension of operations by denying the right-of-way request.

from is set aside and the case is remanded to BLM for further action consistent with this decision.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.

